

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 3213 OF 2020
WITH
INTERIM APPLICATION NO. 01 OF 2020.

Shri Janardan Atamaram Rawool

... Appellant/
Applicant.

Versus

The Municipal Corporation of Greater Mumbai

... Respondent.

Mr. Rajendra K. Yadav for the Appellant/Applicant.

Smt. Madhuri More for the Respondent-MCGM.

CORAM : A. S. GADKARI, J.

DATE : 24th FEBRUARY, 2020

P. C. :

1. By the present Appeal under Order 43 of the Code of Civil Procedure, the appellant has impugned Order dated 10th February 2020 passed in Draft Notice of Motion in Long Cause Suit Stamp No.1565 of 2020, dismissing the said Notice of Motion at draft level by the learned Judge, City Civil & Sessions Court, Mumbai.

2. Heard Mr. Yadav, learned counsel for the appellant and Smt. More, learned counsel for the respondent – Corporation. Perused the entire record annexed to the appeal memo.

3. The record reveals that, the Corporation has issued notice dated 8th January 2020 to the appellant under Section 351(1) of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). In the schedule

annexed to the said notice, it is alleged that, the structure admeasuring 9ft. X 12ft. X 8ft. is constructed with brick masonry wall and A.C. sheet roof in adjacent to the original structure also the side portion of size 8ft. X 12ft. X 6ft. earlier used as passage covered with A.C. Sheet Roof with tarpaulin sheet and a toilet of size 3ft x 4.5ft x 6ft. is constructed with light weight partition wall, is unauthorised structure. The sketch of the said unauthorised structure is appended to the said notice. After receipt of the said notice, the appellant replied it through his Advocate by its reply dated 15th January 2020. The Designated Officer of the respondent-Corporation thereafter passed final Order dated 20th January 2020 and directed the appellant to remove the said unauthorised work mentioned in the notice within a period of 15 days from the date of receipt of the said Order, failing which the said unauthorised work will be demolished departmentally by the Office of the Corporation at the risk, cost and consequences therein of the appellant herein.

4. The appellant therefore filed Long Cause Suit Stamp No. 1565 of 2020 for declaration that, the impugned Show Cause Notice dated 8th January 2020 and the final Order passed thereon dated 20th January 2020 be declared as illegal, bad in law and the same are liable to be quashed and set aside by the Orders of the concerned Court and for other consequential reliefs.

The appellant also filed aforestated Draft Notice of Motion for interim relief in the said suit. The Trial Court by its impugned Order dated

10th January 2020 has dismissed the said Notice of Motion at draft level.

5. Mr. Yadav, learned counsel appearing for the appellant submitted that, due to the rivalry between the society members and the original landlord, the appellant herein has been made as a scape goat. He submitted that, the appellant is a tenant in the suit property and the alleged unauthorised structure is standing thereon since the date on which he has accepted the suit property on tenanted basis from the landlord. He submitted that, as per instructions and the pleadings in the plaint, the suit structure is standing thereon from the year 1975 onwards. He submitted that, the society members of the adjacent building are throwing garbage in front of the residential premises of the appellant and therefore the appellant has erected the said shed temporarily as a remedial measure. He submitted that, the Trial Court has failed to take into consideration these vital aspects of the matter and has committed an error in dismissing the said Notice of Motion. He therefore, prayed that, the impugned Order may be set aside by allowing the present Appeal.

6. Per contra, learned counsel appearing for the respondent-Corporation vehemently opposed the Appeal and submitted that, there is no permission granted by the Corporation to the Appellant to erect the suit structure and for want of legal and/or official permission, the suit structure can not be said to be legally constructed/erected. She therefore, prayed that, the present Appeal may be dismissed summarily.

7. A bare perusal of record would indicate that, to dispel with the

allegation of the Corporation as mentioned in the Notice dated 8th January 2020, at least at this stage, there is no lawful permission produced on record. In the absence of any lawful permission and/or sanctioned plan, the learned counsel for the appellants want this Court to infer that, the respondent-Corporation has granted permission to the appellant to erect the said shed. However, as of today, there is no legal permission granted by either Corporation or any other Competent Authority in favour of the appellant or to the predecessor in title of the appellant permitting him to erect the said structure.

8. If the appellant contends that, due to the harassment caused by the society members (throwing garbage in front of his door) he was constrained to erect the said shed/suit structure then it was imperative for the appellant to take permission from the Corporation for erecting such a structure as per the provisions of law and in the absence thereof, it can not even remotely be inferred the suit structure has legal sanctity in that behalf.

9. In view of the above and after perusing entire record, this Court is of the considered view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

The Appeal being dehors of merits, is accordingly dismissed.

In view of the dismissal of Appeal, Interim Application No.1 of 2020 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)